

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 4056

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ANDREW PALMER,

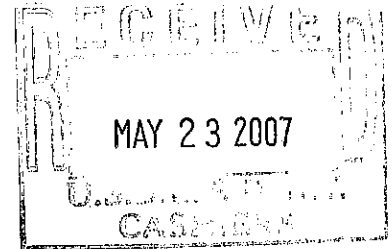
Plaintiff,

-against-

ACCOUNT CONTROL TECHNOLOGY, INC.,

Defendant.  
-----X

**Judge Berman**  
COMPLAINT FOR  
VIOLATION OF THE  
FAIR DEBT  
COLLECTION  
PRACTICES ACT



**INTRODUCTION**

1. This is an action for actual and statutory damages brought by Plaintiff ANDREW PALMER, an individual consumer, against Defendant ACCOUNT CONTROL TECHNOLOGY, INC. ("Defendant" or "ACT") for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices. Defendant repeatedly violated the Act by contacting the plaintiff after he had informed them that he did not wish to be contacted any further regarding the alleged debt.

### **JURISDICTION**

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Venue in this district is proper because the defendants conduct business here and the alleged unlawful conduct occurred in this district.

### **PARTIES**

3. Plaintiff Andrew Palmer is a natural person residing in the State of Tennessee.

4. Defendant Account Control Technology, Inc. is a California corporation engaged in the business of collecting debt in this state with its principal place of business located in Canoga Park, California. The principal purpose of Defendant is the collection of debts and defendant regularly attempts to collect debts allegedly due to another, and is a "debt collector" as defined by 15 U.S.C. § 1692(a)(6).

### **FACTUAL ALLEGATIONS**

5. On or around April 27, 2006 defendant began to attempt to collect an alleged consumer debt from plaintiff by mailing him a letter to his P.O. Box in New York, NY seeking to collect an alleged debt from the plaintiff.

6. On May 17, 2006 the plaintiff sent defendant a letter via fax and certified mail which notified defendant that he disputed the alleged debt and requested that defendant cease all further communications with him. A copy of that letter is attached to this complaint as Exhibit A.

7. Defendant ignored the plaintiffs letter and request and continued its attempt to collect the alleged debt by mailing plaintiff collection letters to his P.O. Box in New York, NY on or around May 24, 2006, June 22, 2006, July 7, 2006, October 2, 2006, November 1, 2006 and November 16, 2006. Copies of those letters are attached to this complaint as Exhibit B.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

8. Plaintiff hereby realleges in incorporates by reference each of the allegations alleged above.

9. Plaintiff Andrew Palmer is a "consumer" as that term is used in 15 U.S.C. § 1692a(3).

10. Defendant ACT is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

11. The alleged debt underlying plaintiff's complaint is a "debt" within the meaning of 15 U.S.C. § 1692a(5).

12. Defendant ACT repeatedly violated 15 U.S.C. § 1692c(c) by contacting the plaintiff in an attempt to collect the alleged debt after the plaintiff notified defendant in writing that he wanted defendant to cease further communications with him.

13. Defendant ACT violated 15 U.S.C. § 1692d by repeatedly contacting the plaintiff after the plaintiff notified defendant in writing that he wanted defendant to cease further communications with him.

14. The plaintiff is entitled to an award of actual and statutory damages for the defendant's unlawful conduct, in addition to an award of costs and attorney's fees, pursuant to 15 U.S.C. § 1692k.


**WHEREFORE**, the plaintiff respectfully requests that judgment be entered as follows:

- A. Awarding the plaintiff actual damages pursuant to 15 USC § 1692k(a)(1).
- B. Awarding the plaintiff statutory damages pursuant to 15 USC § 1692k(a)(2)(A).
- C. Awarding the plaintiff attorney's fees and costs pursuant to 15 USC § 1692k(a)(3).
- D. Granting such other and further relief as the Court deems just.

**DEMAND FOR JURY TRIAL**

Please take notice that plaintiff demands trial by jury in this action.

Dated: May 21, 2007  
New York, NY

  
Kevin C. Mallon (kcm 4798)  
Fishman & Neil, LLP  
305 Broadway, Suite 900  
New York, NY 10007  
(212) 897-5840  
Attorneys for Plaintiff

**EXHIBIT A**

via Certified U.S. Mail and FAX to (661) 395-5989  
(Certified Mail receipt # 7005 1820 0003 0600 0091)

May 17, 2006

**CONFIDENTIAL**

Donald G. Taylor, President  
Account Control Technology, Inc.  
5531 Business Park South, Suite 100  
Bakersfield, CA 93309

-- FAX TRANSMISSION REPORT --  
The 1 page fax sent to Account  
Control Technology at 16613955989  
was successfully transmitted at  
10:27:32 PDT on 06-30-2006.  
Length of transmission: 79 seconds

**RE: Dispute of Account; Request to Cease Communication**

Dear Mr. Taylor,

Your company recently attempted to contact me concerning collection of an alleged account. Several disputes of the alleged amounts owed have already been sent to the Department of Education (ED) and the relevant state guaranty agency. These disputes were sent in accordance with ED's guidelines and policies. The alleged amounts owed are still being disputed directly with ED and the guaranty agency in accordance with applicable laws and policies, thus the placement of this account with your agency was an error.

Please permanently remove from your databases all information about me and the alleged account associated with my name. Please also shred or return any hard copy information about these matters to whomever sent or transmitted them to you. Finally, please do not contact me, any member of my family, any employer of mine, or any other party about this matter by telephone, mail, or any other means of communication.

This letter serves as notice that I may use telephone recording or other technology to document any attempts to contact me by telephone or via any other means.

Thank you for your attention.

Sincerely,

*Andrew Palmer*

Andrew C. Palmer  
SSN: 38\* - \*\* - \*\*76

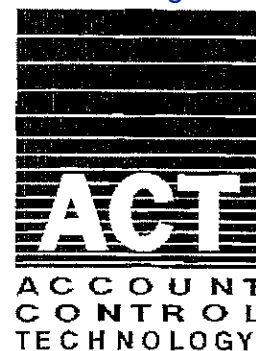
U.S. POSTAL SERVICE CERTIFIED MAIL RECEIPT (Postage and Fees Only, No Insurance, No Return Receipt)	
BAKERSFIELD, CA 93309	
Postage	\$ 0.39
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 2.79
UNIT ID: 0006	
Postmark CTH: K0XJ10 05/18/06	
Sent to Donald G. Taylor, President - ACT, Inc. Street, Apt. No. or PO Box No. 5531 Business Park South, Ste 100 City, State, ZIP+4 Bakersfield, CA 93309	

Receipt #: 7005 1820 0003 0600 0091  
Status: Delivered  
Item was delivered at 10:18 am on  
May 22, 2006 in BAKERSFIELD, CA 93309.

**EXHIBIT B**

5531 Business Park South, Ste 100  
 PO Box 11750  
 Dept. 573655 - 18A  
 Bakersfield, CA 93389-1750  
 Address Service Requested

ACT 133



05-24-06 Account No: 38009207676 - CD9

PALMER, ANDREW C  
 NEW YORK, NY 10163-2898  
 nullnull

**ACCOUNT IDENTIFICATION**

Client: US Department of Education  
 Principal Balance :\$ 40331.63  
 Interest :\$ 23080.14  
 Penalty Charges :\$ 0.00  
 Fees & Costs :\$ 15852.95  
 Total Balance :\$ 79264.72

**Offer of Assistance**

This letter is to notify you that the U.S. Department of Education (ED) has referred your account to Account Control Technology, Inc. (ACT) for collection of your defaulted student debt. At this time, ED has indicated your entire balance as indicated above is due and payable. We do recognize that many individuals may not be in the position to pay the full balance in one payment. Therefore, ACT is committed to providing assistance to you in determining the best resolution to your obligation. Our staff is trained to discuss all available options for repayment of your debt. Please telephone one of our Customer Support Staff, for assistance at this toll free telephone number

**(866) 887-2800.**

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or a portion thereof, we will assume this debt is valid. If you notify this office within 30 days after receiving this notice, we will obtain verification of the debt or copy of a judgment, and mail such documents to you. If you notify this office in writing within 30 days after receiving this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

This has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

**SEE THE FOLLOWING INFORMATION FOR YOUR STATE OF RESIDENCE****NOTICE TO COLORADO RESIDENTS**

If you notify us in writing that you wish us to cease contact by telephone at your place of employment or residence, then no such further contact by telephone shall be made. If you notify us in writing that you refuse to pay a debt, or wish us to cease all further communication with you, then we will not communicate with you further regarding such debt except a final written communication to advise you that further efforts are being terminated, to notify you that we may invoke specific remedies we ordinarily invoke, or, if applicable, that we intend to invoke some specific remedy permitted by law.

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.AGO.STATE.CO.US/CAB.HFM](http://WWW.AGO.STATE.CO.US/CAB.HFM).

**Massachusetts****Notice of Important Rights**

You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked or delivered within seven days of such request. You may terminate this request by writing to the collection agency.

5230 Washington Street  
 West Roxbury, MA 02132

Hours: 8:00 AM — 9:00 PM, Monday - Friday

**Minnesota**

This agency is licensed by Minnesota Department of Commerce.

**New York**

Our collection agency license number is 0999264.

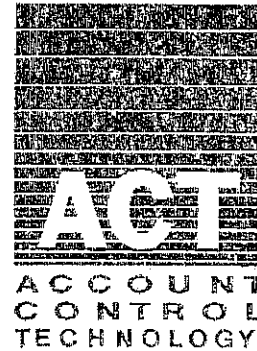


5531 Business Park South, Ste 100  
 PO Box 11750  
 Dept. 573655 -18B  
 Bakersfield, CA 93389-1750  
 Address Service Requested.

ACT 01

06-22-06 Account No: 38009207676 - CD9

PALMER, ANDREW C  
 NEW YORK, NY 10163-2898  
 mlllml



ACCOUNT IDENTIFICATION

Client: US Department of Education  
 Principal Balance :\$ 40331.63  
 Interest :\$ 23308.49  
 Penalty Charges :\$ 0.00  
 Fees & Costs :\$ 15910.06  
 Total Balance :\$ 79550.18

**Request for Payment Plan**

Over the past several years we have helped thousands of borrowers resolve their defaulted student debt. Our experience has shown borrowers will honor their promise to repay given the chance to do so based upon their income and expenses. We also understand that demanding payments greater than you can afford will not meet our goal of helping you make payments each and every month, nor can we accept what you offer without reviewing your income and expenses. We must work together. To have an objective discussion regarding your ability to pay, we are requesting that you complete the enclosed financial statement. You may either fax it to our office at (661) 395-5989 or mail it to:

ACT, Inc.  
 PO Box 11750  
 Bakersfield, CA 93389-1750

Additionally, take note of the following:

This request for information, including your SSN, is authorized under 31 U.S.C. 3711, 20 U.S.C. 1078-6 and 1091(A)(4). You are not required to provide this information. If you do not, we may not be able to set up an installment payment that fits your financial ability. The information will be used to evaluate your ability to pay. It may be disclosed to Government agencies and their contractors, to employers, lenders and others to enforce this debt; to parties with a right to this information under the Freedom of Information Act or other Federal law or with your consent. These uses are explained in a notice in the Federal Register of June 4, 1999, vol. 64, pg. 30106, as amended; we will send a copy at your request. Your SSN is used to verify your identity and insure that data about your loan may be recorded accurately."

Working together with our Customer Support Staff, we are confident a repayment agreement commensurate with your income can be achieved. If you have questions, please telephone

**(866) 887-2800.**

This has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

5531 Business Park South, Ste 100  
 PO Box 11750  
 Dept. 573655 - 18C  
 Bakersfield, CA 93389-1750  
 Address Service Requested

ACT 49

07-07-06 Account No: 38009207676 - CD9

PALMER, ANDREW C  
 NEW YORK, NY 10163-2898  
 nullnull



#### ACCOUNT IDENTIFICATION

Client: US Department of Education  
 Principal Balance :\$ 40331.63  
 Interest :\$ 23434.44  
 Penalty Charges :\$ 0.00  
 Fees & Costs :\$ 15941.53  
 Total Balance :\$ 79707.60

#### **Help us Help You**

Over the past several years we have helped thousands of borrowers resolve their defaulted student debt. Our experience has shown borrowers will honor their promise to repay given the chance to do so based upon their income and expenses. We therefore suggest you telephone our toll free number (866) 887-2800 so we may help you.

Some of the options available to you are:

- Compromise or waive a portion of your debt for payment of the remaining balance.
- Rehabilitating your loan by demonstrating your commitment to repay monthly. Accounts that successfully rehabilitate will receive a waiver of the remaining collection costs at the time of rehabilitation.
- Establishing an affordable monthly payment plan based upon your income.
- Consolidation of your loan(s) into a new loan

Working together with our Customer Support Staff, we are confident one of these options can fit your needs.

If you do not make arrangements to pay the account in full or agree to an acceptable payment plan, we may forward this account to the U.S. Department of Education (ED) for Administrative Wage Garnishment or litigation.

**The Debt Collection Improvement Act, 31 U.S.C. 3720D and 31 C.F.R. 285.11 authorizes ED to garnish 15% of those individuals' wages who refuse to pay their legal obligations to ED, without having to bring action in Federal Court.**

This has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

#### **SEE THE FOLLOWING INFORMATION FOR YOUR STATE OF RESIDENCE**

##### **NOTICE TO COLORADO RESIDENTS**

If you notify us in writing that you wish us to cease contact by telephone at your place of employment or residence, then no such further contact by telephone shall be made. If you notify us in writing that you refuse to pay a debt, or wish us to cease all further communication with you, then we will not communicate with you further regarding such debt except a final written communication to advise you that further efforts are being terminated, to notify you that we may invoke specific remedies we ordinarily invoke, or, if applicable, that we intend to invoke some specific remedy permitted by law.

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE  
[WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM](http://WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM)

##### **Massachusetts**

##### **Notice of Important Rights**

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5230 Washington Street

West Roxbury, MA 02132

Hours: 8:00 AM — 9:00 PM, Monday - Friday

##### **Minnesota**

This agency is licensed by Minnesota Department of Commerce.

##### **New York**

Our collection agency license number is 0999264.

ACT 63

PALMER, ANDREW C  
PO BOX 2898  
NEW YORK, NY 10163-2898



Client: US Department of Education		
Principal Balance	:	\$ 45206.17
Interest	:	\$ 26768.95
Penalty Charges	:	\$ 0.00
Fees & Costs	:	\$ 17993.80
Total Balance	:	\$ 89968.92

This letter is to notify you that the U.S. Department of Education (ED) has referred your account to Account Control Technology, Inc. (ACT) for collection of your defaulted student debt. At this time, ED has indicated your entire balance as indicated above is due and payable. We do recognize that many individuals may not be in the position to pay the full balance in one payment. Therefore, ACT is committed to providing assistance to you in determining the best resolution to your obligation. Our staff is trained to discuss all available options for repayment of your debt. Please telephone one of our Customer Support Staff for assistance at this toll free telephone number

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or a portion thereof, we will assume this debt is valid. If you notify this office within 30 days after receiving this notice, we will obtain verification of the debt or copy of a judgment, and mail such documents to you. If you notify this office in writing within 30 days after receiving this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

This has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

SEE THE FOLLOWING INFORMATION FOR YOUR STATE OF RESIDENCE

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[WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM](http://WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM)

## Massachusetts

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West Roxbury, MA 02132  
Hours: 8:00 AM — 9:00 PM, Monday - Friday

## Minnesota

This agency is licensed by Minnesota Department of Commerce.

**New York**

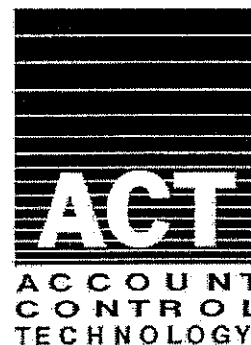
Our collection agency license number is 0999264.

5531 Business Park South, Ste 100  
 PO Box 11750  
 Dept. 631059 - 18B  
 Bakersfield, CA 93389-1750  
 Address Service Requested

ACT 11

11-01-06 Account No: 38009207676 - CD9

PALMER, ANDREW C  
 PO BOX 2898  
 NEW YORK, NY 10163-2898  
 |||||

ACCOUNT IDENTIFICATION

Client: US Department of Education  
 Principal Balance :\$ 45206.17  
 Interest :\$ 27084.97  
 Penalty Charges :\$ 0.00  
 Fees & Costs :\$ 18072.81  
 Total Balance :\$ 90363.95

**Request for Payment Plan**

Over the past several years we have helped thousands of borrowers resolve their defaulted student debt. Our experience has shown borrowers will honor their promise to repay given the chance to do so based upon their income and expenses. We also understand that demanding payments greater than you can afford will not meet our goal of helping you make payments each and every month, nor can we accept what you offer without reviewing your income and expenses. We must work together. To have an objective discussion regarding your ability to pay, we are requesting that you complete the enclosed financial statement. You may either fax it to our office at (661) 395-5989 or mail it to:

ACT, Inc.  
 PO Box 11750  
 Bakersfield, CA 93389-1750

Additionally, take note of the following:

This request for information, including your SSN, is authorized under 31 U.S.C. 3711, 20 U.S.C. 1078-6 and 1091(A)(4). You are not required to provide this information. If you do not, we may not be able to set up an installment payment that fits your financial ability. The information will be used to evaluate your ability to pay. It may be disclosed to Government agencies and their contractors, to employers, lenders and others to enforce this debt; to parties with a right to this information under the Freedom of Information Act or other Federal law or with your consent. These uses are explained in a notice in the Federal Register of June 4, 1999, vol. 64, pg. 30106, as amended; we will send a copy at your request. Your SSN is used to verify your identity and insure that data about your loan may be recorded accurately."

Working together with our Customer Support Staff, we are confident a repayment agreement commensurate with your income can be achieved. If you have questions, please telephone

**(866) 887-2800.**

This has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

ACT 8

**ACT**  
ACCOUNT  
CONTROL  
TECHNOLOGY

### ACCOUNT IDENTIFICATION

## Help us Help You

Some of the options available to you are:

- Working together with our Customer Support Staff, we are confident one of these options can fit your needs.

The Debt Collection Improvement Act, 31 U.S.C. 3720D and 31 C.F.R. 285.11 authorizes ED to garnish 15% of those individuals' wages who refuse to pay their legal obligations to ED, without having to bring action in Federal Court.

SEE THE FOLLOWING INFORMATION FOR YOUR STATE OF RESIDENCE

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West Roxbury, MA 02132

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Our collection agency license number is 0999264.